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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,491	03/16/2004	Dirk Van Dijk	044186.002	1213
25461 7590 10/09/2007 SMITH, GAMBRELL & RUSSELL SUITE 3100, PROMENADE II 1230 PEACHTREE STREET, N.E. ATLANTA, GA 30309-3592			EXAMINER GILBERT, WILLIAM V	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/801,491	VAN DIJK ET AL.	
	Examiner	Art Unit	
	William V. Gilbert	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,13,14,16-18,22-26,32,37,38,40-42,46-53 and 61-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 3-7,9-12,15,19-21,27-31,33-36,39,43-45, and 54-60.

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DETAILED ACTION

This is a Final Office Action. Claims 1-64 are pending. Claims 3-7, 9-12, 15, 19-21, 27-31, 33-36, 39, 43-45 and 54-60 are withdrawn. Claims 1, 2, 8, 13, 14, 16-18, 22-26, 32, 37, 38, 40-42, 46-53 and 61-64 are examined.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 24 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 24: Applicant claims "a second longitudinal strip" in both lines 8 and 12 of Claim 1 in reference to a single panel. It is unclear to the Examiner if this is to be the same longitudinal strip or two different strips. The same applies to lines 8 and 11 of Claim 24.

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Claim 48 recites the limitation "the opposite longitudinal edge" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, 13, 14, 16, 22, 23, 25, 26, 48 and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis (U.S. Patent No. 5,819,491).

Claim 1: Davis discloses a panel (Fig 3: 20) having a hollow profile body with first and second walls (21, 22 respectively), a first longitudinal edge (portions 23, 49, 35A, 35B) and a second longitudinal edge (portions 24, 41 and 44) that define a hollow chamber in the body (Fig. 3, generally), a first longitudinal strip (35A) having a raised end lip (35B) and at least one hole (Fig. 2: 37), the second edge is provided with a groove (formed by 41 and 44) bounded by a groove wall (41) and

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a second longitudinal strip for accommodating a raised end tip (see "A" from attached Fig. 13 below) of a first longitudinal strip of a second panel to be located in an adjacent position with respect to the panel, the second longitudinal edge has a second longitudinal strip ("B" below, 41, 44) having a downward stop (41) which when the panel is in mating engagement with the adjacent panel, extends over a top surface of a first longitudinal strip (portion "B" achieves this), and a sealing strip is formed (Col 4, lines 9 and 10: the top walls can be butted against each other, which would form a sealing strip), against a first wall of the panel.

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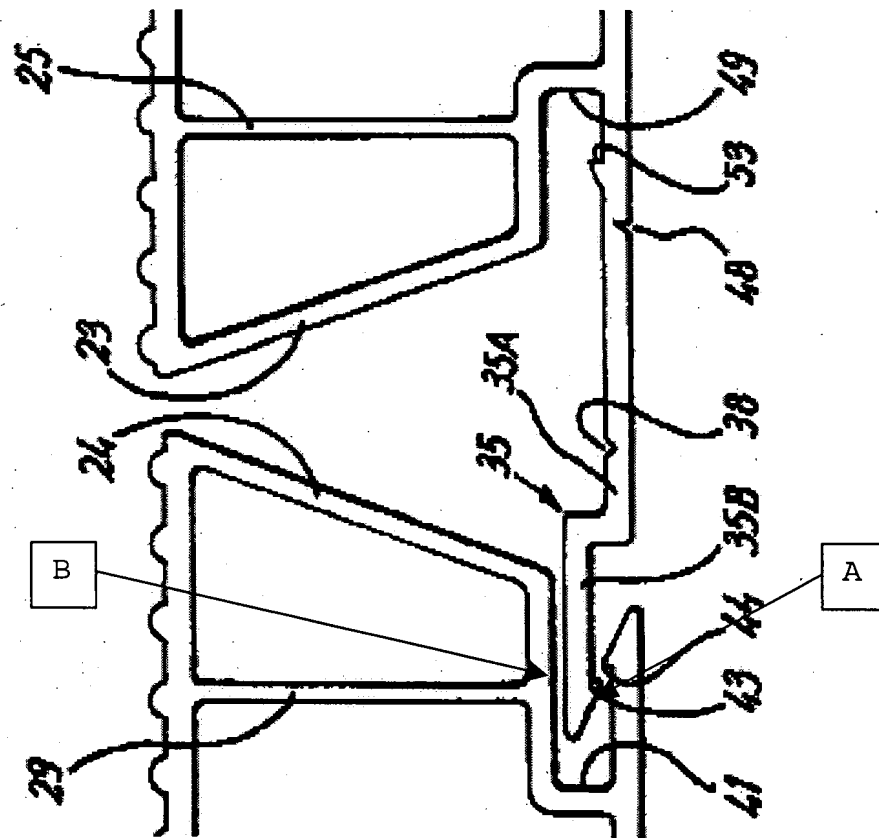


Figure 13 from Davis

Claim 2: a first longitudinal wall (25) adjacent the first edge and a second longitudinal wall (29) adjacent the second edge (portion 41).

Claim 8: the second longitudinal strip (24) is at the second longitudinal edge (portion 41 and 44).

Claim 13: the first longitudinal strip (portion 35A) is provided with a pilot edge (48) at a side that faces a bottom side of the panel.

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Claim 14: the first longitudinal edge, second longitudinal edge and strip form an upwardly opening channel (Fig. 13, generally).

Claim 16: the first wall (21) has a flat textured surface.

Claim 22: the first strip near the location of the holes has a protrusion (53) for spacing the strip from the second wall (22).

Claim 23: the first and second walls (21, 22) are parallel.

Claim 25: the cover profile is a walking surface.

Claim 26: the second strip (24) extends over the first strip (35A) beyond the opposite longitudinal wall (35).

Claim 48: Davis discloses a profile body having first and second walls (21 and 22, respectively), a first longitudinal edge (23, 49, 35A and 35B) and a second longitudinal edge (24, 41 and 44) the first longitudinal edge has a first longitudinal strip (35A, 35B) having a hole (37), the second longitudinal edge has a space (proximate 41) for accommodating an edge area of a first longitudinal strip, the second longitudinal edge has a second longitudinal strip ("B", 41, 44) which is in mating engagement with the side of the first strip of the adjacent profile body that faces the first wall and extends over the first strip (portion "B" extends over) to an opposite longitudinal wall (35).

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Claim 64: Davis discloses a panel with a flat elongated hollow body with first and second walls (21, 22) first and second longitudinal edges (35B, 44), first and second longitudinal strips (35A, 24), the first strip has a hole (37), the second strip has a space (41) for accommodating an edge of an adjacent panel.

Claims 24, 32, 37, 38, 46, 47 and 63 are rejected under 35 U.S.C. 102(b) as being anticipated by Tal (U.S. Patent No. 5,050362).

Claim 24: Tal discloses a cover profile system with a plurality of hollow members having first and second walls and first and second longitudinal edges (see "K", "L", "M" and "N" respectively of Figure 2A from Tal, below) that define a hollow chamber, the first longitudinal edge has a first longitudinal strip (20, 60) having a raised end tip (58) and a hole (Fig. 3A: 64) for attachment, the second longitudinal edge has a groove (46) bounded by a groove wall (42) and second longitudinal strip (34, 38) for accommodating a raised end tip of an adjacent profile, the second edge has a second longitudinal strip having a downward stop (50) engaging the first longitudinal strip (portion 60) and extends over a first wall of the second profile body.

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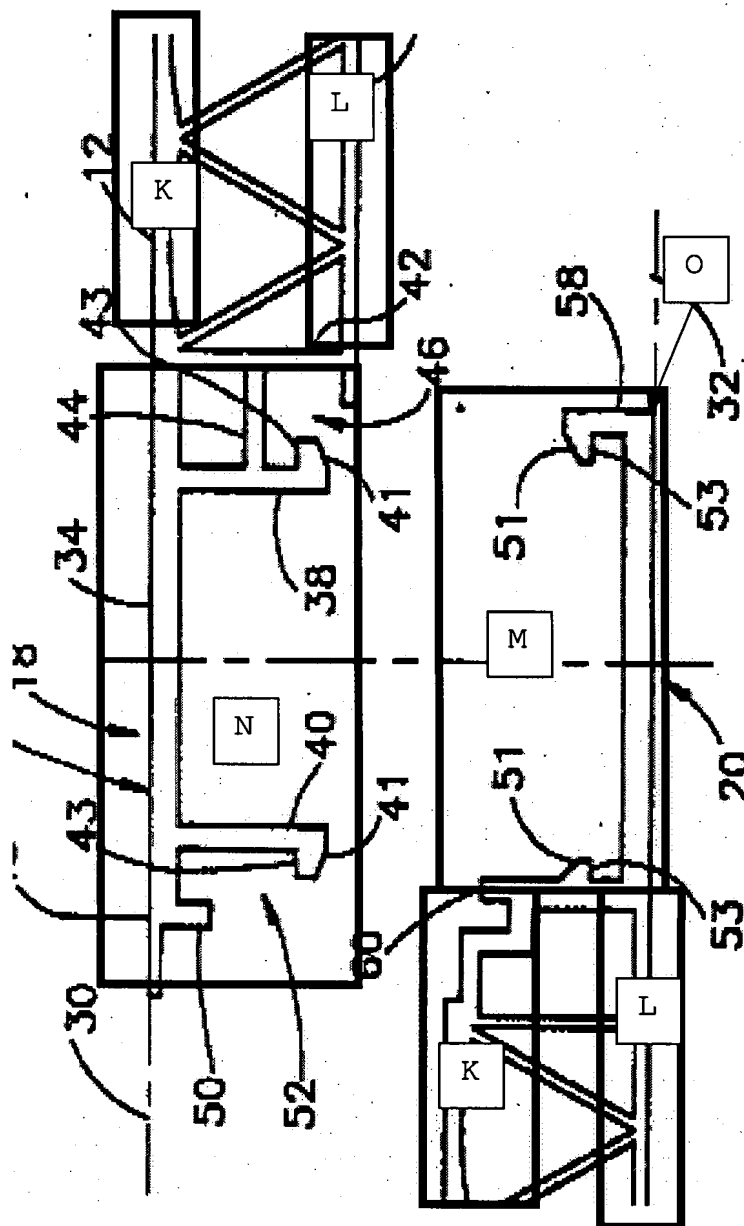


Figure 2A from Tal

Claim 32: the second longitudinal strip is formed at the second longitudinal edge.

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Claim 37: the first longitudinal strip has a pilot edge ("O" above) that faces the bottom side.

Claim 38: the first and second longitudinal edge and the second strip form an upwardly opening channel (depending on the orientation of the panel.)

Claim 46: the first strip has protrusions (51) for spacing it from the surface of the second wall.

Claim 47: the first and second walls are parallel.

Claim 63: the prior art is a roof (Col. 1, lines 5-10).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis.

Claims 17 and 18: Davis discloses the claimed limitations except for the dimensions of the grooves. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have the limitation because Applicant did not state a criticality for the necessity of the limitation and the prior art of record is capable of meeting the limitation.

Claims 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tal in view of Davis.

Claims 40-42: Tal discloses the claimed invention except for the textured surface with grooves and the dimensions of the grooves. Davis discloses a panel with a textured surface (Fig. 3: 32) of grooves. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to add grooves to the panel in Tal for aesthetic reasons and the

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dimensions of the grooves are a matter of design choice because Applicant did not state a criticality for the necessity of the limitation and the prior art of record is capable of meeting the limitation as claimed.

Claims 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Groh (U.S. Patent No. 6,272,808).

Claims 49 and 53: Davis discloses the claimed invention except the material of the panel is a thermoplastic polymer containing cellulose fibers. Groh discloses a panel made of plastic polymer containing cellulose fibers (Col. 2, lines 65-Col. 3, line 5 per Claim 49), and the polymer is polyvinyl chloride (Col. 2, line 67 per Claim 53). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the materials in Groh with the panel in Davis because the material in Groh is structurally equivalent to the material of the panel in Davis and would perform equally as well.

Claims 50-52: Davis in view of Groh discloses the claimed invention except for the percent content of the cellulose fiber (Claim 50) and the dimensions of the fibers (Claim 51 and 52). It would have been obvious at the time the invention was made to

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a person having ordinary skill in the art as a matter of design choice to have these limitations because Applicant did not state a criticality for the necessity of the limitation and the prior art of record is capable of meeting the limitation.

Claims 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tal.

Claims 61 and 62: Tal discloses the claimed invention except that the panel is used as a floor or wall. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the panel in Tal as a floor or wall because the panel in Tal is disclosed as a modular construction element (Col. 1, lines 5-10), and though it may be used for roofing, it is not limited to such.

Response to Arguments

4. The following addresses Applicant's Remarks and Arguments dated 16 July 2007.

Regarding Applicant's response to the double patenting rejection (page 13 of Remarks), Applicant should respectfully note that the rejection is a provisional rejection (see Office

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Action dated 19 April 2007) which means it is pending on the examination of the co-pending application.

Applicant's arguments with respect to the Claims have been considered but are moot in view of the new ground(s) of rejection as the claims have been amended by the Applicant.

Regarding Applicant's arguments with respect to the 35 U.S.C. §103 rejection of Davis (cited above) in view of Groh (cited above), the Examiner respectfully disagrees. The material in Groh is both structurally and functionally equivalent to the material used to make the panel in Davis and would perform equally as well with the panel.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS

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of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG

2M
01 Oct 07

[Signature]
PATENT EXAMINER
10/1/07